

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**LONE STAR 24 HR ER FACILITY,
LLC,**

Plaintiff,

Case No. SA-22-CV-01090-JKP

v.

**BLUE CROSS AND BLUE SHIELD OF
TEXAS, A DIVISION OF HEALTH
CARE SERVICE CORPORATION;**

Defendant.

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant's Motion to Dismiss Plaintiff's Third Amended Complaint. *ECF No. 47*. Plaintiff did not respond and was given ample time and opportunity to do so. The Motion to Dismiss is GRANTED as unopposed. Plaintiff's causes of action that may be asserted based upon the facts supporting this action are DISMISSED WITH PREJUDICE.

Procedural Background

Plaintiff Lonestar 24 Hr ER Facility (Lonestar) filed its Original Complaint, and shortly thereafter, a First Amended Complaint. *ECF Nos. 1,6*. Pursuant to this Court's Standing Order, Defendant Blue Cross Blue Shield of Texas (BCBSTX) sent Lonestar written notice of the deficiencies in the First Amended Complaint and the grounds on which it intended to file a Motion to Dismiss. Pursuant to the Standing Order, Lonestar gave notice to the Court it would amend its Complaint. *ECF No. 13*. Lonestar then filed a Second Amended Complaint, and BCBSTX filed a Motion to Dismiss the Second

Amended Complaint. *ECF Nos. 17,21*. After complete briefing on the Motion to Dismiss the Second Amended Complaint and extensions of time to complete the briefing, Lonestar filed a Motion for Leave to file a Third Amended Complaint and to Substitute and Add Real Parties In Interest. *ECF No. 34*.

Magistrate Judge Farrer held an Initial Pretrial Conference during which he allowed the parties to submit briefing on Lonestar's Motion for Leave to File a Third Amended Complaint. After briefing was complete, Magistrate Judge Farrer held a hearing on the Motion and during the hearing, granted Lonestar one final opportunity to submit a Third Amended Complaint. *ECF Nos. 43,44*. Lonestar then filed the Third Amended Complaint, and on May 22, 2023, BCBSTX filed this Motion to Dismiss. *ECF Nos. 44,47,48*. Lonestar did not file a Response to BCBSTX's Motion to Dismiss.

Discussion

Local Rule CV-7 provides "[a] response to a dispositive motion shall be filed not later than 14 days after the filing of the motion. . . . If there is no response filed within the time period prescribed by this rule, the court may grant the motion as unopposed." W.D. Tex. R. CV-7(d)(2) (2021). Accordingly, Lonestar's failure to timely respond is sufficient grounds to grant BCBSTX's Motion to Dismiss the Third Amended Complaint pursuant to Local Rule CV-7.

The Court finds Lonestar was given ample opportunity to file a viable Third Amended Complaint, was advised numerous times of the deficiencies in its pleadings, and actively participated in this matter to support and defend the asserted causes of action. Yet, Lonestar failed to respond to the pending Motion to Dismiss. Pursuant to Local Rule CV-7, the Court GRANTS

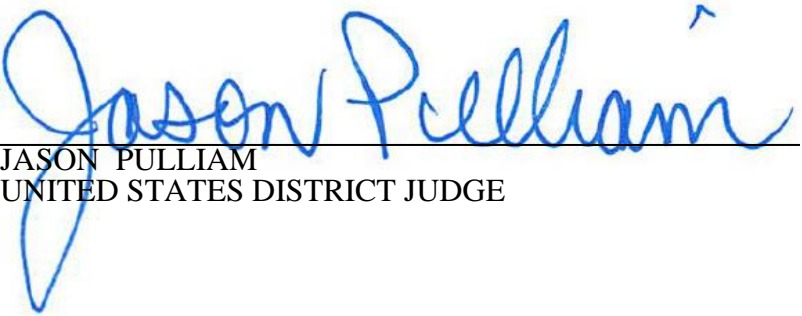
BCBSTX's Motion to Dismiss. Lonestar's causes of action that may be asserted related to the facts supporting this action are DISMISSED WITH PREJUDICE.

The referral of this matter to Magistrate Judge Farrer is hereby withdrawn.

A final judgment will issue separately.

It is so ORDERED.

SIGNED this 20th day of June, 2023.



JASON PULLIAM
UNITED STATES DISTRICT JUDGE